

**State of California
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758**

**Title 2, CALIFORNIA CODE OF REGULATIONS
ADOPT SECTIONS 10000 through 10066**

Title 2. Administration

Division 4.1 – Department of Fair Employment and Housing

**Chapter 1. Procedures of the Department of Fair Employment and
Housing**

§ 10000. Statement of Purpose

These regulations interpret, implement, and supplement the procedures of the Department of Fair Employment and Housing (department) set forth in Article 1 of Chapter 7 (Gov. Code, § 12960 et seq.) (applicable to employment discrimination, Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), and Disabled Persons Act (Civ. Code, § 54 et seq.) complaints filed with the department) and Article 2 of Chapter 7 (Gov. Code, § 12980 et seq.) (applicable to housing discrimination complaints filed with the department) of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). These regulations and provisions of the FEHA shall govern the department's practice and procedure with respect to the filing, investigation and conciliation of complaints alleging practices made unlawful by any law the department enforces.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f), 12948, 12960–12976, and 12980–12989.3, Government Code.

§ 10001. Definitions

(a) "Accusation" means the charging document issued by the department pursuant to section 12965 or 12981 of the Government Code.

(b) "Authorized signature" means any of the following: (1) the signature of an attorney whom the complainant has identified in writing as his or her legal representative, licensed to practice law in the State of California; (2) the signature of any person other than an attorney whom the complainant has

identified in writing as a person authorized to sign a complaint on his or her behalf; (3) the signature of a parent or legal guardian who signs a complaint on behalf of his or her minor child; (4) the signature of a direct relative (parent, child, sibling, etc.) with an interest in the estate of a deceased complainant or the executor of the estate of a deceased complainant.

(c) "Complainant" means a "person," as that term is defined by Government Code section 12925(d), who files a complaint with the department alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces.

(d) "Complaint" means a complaint filed with the department alleging that a "person," as that term is defined by Government Code section 12925(d), or class or group of persons, has been aggrieved by a practice made unlawful by any law the department enforces.

(e) "Conciliation" means bringing two opposing sides together to reach a compromise in an effort to resolve a complaint filed with the department, which includes pre-determination settlement negotiations and post-investigation conciliation and/or settlement conferences conducted by the department's enforcement division.

(f) "Department" means the Department of Fair Employment and Housing (DFEH) and includes any officer, employee, or other individual delegated any function, power, or duty of the department.

(g) "Departmental appeal" means a verbal or written appeal or request made to the department by a complainant or respondent seeking reconsideration of the department's determination regarding a complaint filed with the department.

(h) "Director" means the Director of the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the director.

(i) "District Administrator" means any employee, officer, or other individual delegated the authority to supervise the staff and day-to-day operations of a department district, satellite, or regional office.

(j) "EEOC" means the United States Equal Employment Opportunity Commission.

(k) "Enforcement Division" means the division of the department responsible for filing, investigating, and conciliating complaints alleging a practice made unlawful by any law the department enforces.

(l) "Filed or to file" means, except for complaints submitted online and/or created on the Internet via the department's automated right-to-sue notice system at www.dfeh.ca.gov, a complaint is "filed" with the department when it is date-stamped "received" by the department.

(m) "HUD" means the United States Department of Housing and Urban Development.

(n) "Legal Division" means the division of the department responsible for issuing and prosecuting accusations and civil complaints alleging a practice made unlawful by any law the department enforces.

(o) "Mediation Division" means the division of the department that employs trained neutrals to mediate complaints filed with the department when the parties to a complaint agree to mediate. The mediation division is separate from the department's enforcement and legal divisions. It utilizes volunteers as well as mediation division staff to facilitate communication between parties to assist them in attempting to reach a mutually acceptable settlement agreement.

(p) "Pre-determination" means the department has not yet determined whether a complaint has merit.

(q) "Protected basis" means any basis or characteristic upon which discrimination is prohibited by the FEHA, the Unruh Civil Rights Act (Civ. Code, § 51), the Ralph Civil Rights Act (Civ. Code, § 51.7), or any other law the department enforces.

(r) "Regional Administrator" means any employee, officer, or other individual delegated the authority to supervise the staff and operations of a department regional office or multiple district or satellite offices.

(s) "Registered complaint" means a filed complaint to which the department has assigned a department case file number.

(t) "Respondent" means an entity or person alleged to have committed a practice made unlawful by a law the department enforces and against whom a complaint has been filed with the department or an accusation has been issued.

(u) "Verified complaint" means a complaint submitted to the department with the complainant's oath or affidavit stating that to the best of his or her knowledge, all information contained in the complaint is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true. To be "verified" a complaint filed with the department need not be signed; verification need only confirm the truth of the allegations submitted, including by submitting the allegations under penalty of perjury.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 446, Code of Civil Procedure; Sections 12901-12903, 12925, 12927, 12930-12932, 12940, 12950, 12955-12956, 12960, 12961, 12963.1(a), 12963.7, 12964, 12965, 12971, 12980-12981, 12984-12989.3, 7, 12989, and 12995, Government Code; Section 7285.5, Title 2, California Code of Regulations (Register 99, No. 12).

Subchapter 1. Employment, Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), and Disabled Persons Act (Civ. Code, § 54 et seq.) Complaints

§ 10002. Filing a Complaint of Employment Discrimination with the Department

(a) Any person claiming to be aggrieved by an employment practice made unlawful by the FEHA may file with the department a verified complaint, in

writing, that shall describe the unlawful conduct alleged and include the following, on a form prescribed by the department:

- (1) complainant's name and, where available, address, telephone number and e-mail address;
- (2) respondent's name, address and, where available, telephone number and e-mail address. If applicable, the job title and/or capacity in which the respondent is being named also shall be included;
- (3) a description of the alleged act or acts of discrimination, harassment or retaliation;
- (4) the date or dates each alleged act of discrimination, harassment or retaliation occurred, including the date of the last or most recent alleged act;
- (5) each protected basis upon which the alleged discrimination or harassment was based;
- (6) for retaliation complaints, the date and type of protected activity in which the complainant engaged;
- (7) the complainant's declaration, made under penalty of perjury under the laws of the State of California, that to the best of his or her knowledge, all information stated in the complaint is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true;
- (8) the signature of the complainant, or an authorized signature, and the date signed, unless the complaint is filed electronically; and
- (9) complaints filed electronically need not be signed; complaints filed electronically shall state that by submitting the complaint, the complainant declares under penalty of perjury under the laws of the State of California that to the best of his or her knowledge, all information stated in the complaint is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true.

(b) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice occurred, except that this period may be extended as set forth in section 12960(d) of the Government Code and section 10018 of the department's regulations.

(c) For all complaints not filed online via the department's Web site, the filing date shall be the date a DFEH office receives a signed complaint, regardless of whether the complaint is signed by the complainant in the office or the complaint is signed elsewhere and transmitted to the office via United States (U.S.) mail, electronic mail, private carrier mail (e.g., FedEx), facsimile, or hand delivery. All complaints not filed online shall be date-stamped received by the department on the same day the department first receives the signed complaint. A limited exception exists where a complainant cannot sign a complaint for investigation before the applicable statute of limitations runs. In this limited circumstance, the department shall file the unsigned complaint and date-stamp it received before the statute of limitations runs. Notwithstanding the foregoing, the department shall obtain a signature on the unsigned complaint before it is served.

(d) The filing date for complaints filed via the department's Web site shall be the date on which the complaint was submitted online, which is printed on the complaint after the words "DATE FILED."

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), and 12960(b) & (d), Government Code.

§ 10003. Liberal Construction of Complaints

The department shall liberally construe all complaints to effectuate the purpose of the laws the department enforces to safeguard the civil right of all persons to seek, obtain and hold employment without discrimination. Where the facts alleged in a discrimination complaint support a claim of retaliation, harassment, or any other claim over which the department has jurisdiction, the department shall construe the complaint to include those claims within the scope of a discrimination claim, regardless of whether such other claims are expressly stated. Likewise, where the facts alleged in a harassment complaint support a claim of discrimination, retaliation, or any other claim over which the department has jurisdiction, the department shall construe the complaint to include those claims within the scope of the harassment claim, regardless of whether such other claims are expressly stated.

Note: Authority cited: Section 12930(e) Government Code. Reference: Sections 12920, 12921(a), 12930(f)(1), 12960(b), and 12993(a), Government Code.

§ 10004. Categories of Employment Discrimination Complaints Accepted by the Department for Filing

(a) Complaint filed for investigation. The department shall only accept a complaint for investigation where the conduct alleged, if proven, would be a violation of a law the department enforces, the statute of limitations has not run (except as otherwise provided in the FEHA or these regulations), and each named respondent is an entity or person over whom the department has jurisdiction under the laws the department enforces.

(b) Complaint taken for filing purposes only. A complaint the department accepts for filing purposes only, which the department does not investigate.

(c) Complaint filed to request an immediate right-to-sue notice. A complaint, which the department does not investigate, filed to request an immediate right-to-sue notice.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10005. Obtaining a Right-to-Sue Notice from the Department

(a) Any person claiming to be aggrieved by an employment practice made unlawful by the FEHA may forgo having the department investigate his or her complaint and instead obtain an immediate right-to-sue notice. A right-to-sue notice issued by the department shall state that the aggrieved party may bring a civil action against the person or entity named in the complaint within one year from the date of the notice.

(b) Once the department issues a right-to-sue notice for a particular complaint, the department shall not investigate that complaint. Obtaining an immediate right-to-sue notice and waiving the department's investigation is advisable only if a complainant has been instructed by his or her attorney to obtain a right-to-sue notice.

(c) An immediate right-to-sue notice may be obtained via the department's automated right-to-sue system accessible on the department's Web site at www.dfeh.ca.gov by filing a right-to-sue complaint. An immediate right-to-sue notice also may be obtained by filing a right-to-sue complaint via submission of a completed right-to-sue notice packet to a department district, satellite, or regional office via U.S. or electronic mail or facsimile. A right-to-sue packet may be obtained by telephone or written request (delivered via facsimile or U.S. or electronic mail) to a department district, satellite, or regional office, or by downloading the packet from the department's Web site. With the exception of its automated right-to-sue system, all right-to-sue notices issued by the department shall be delivered by U.S. or electronic mail. A right-to-sue notice shall not be provided to any member of the public who appears in person at any department office without the prior consent of the district or regional administrator.

(d) To obtain an immediate right-to-sue notice via the department's automated right-to-sue system or by submitting a completed right-to-sue notice packet to the department, an aggrieved person shall file a right-to-sue complaint with the department containing the following:

- (1) complainant's name and, where available, address, telephone number and e-mail address;
- (2) respondent's name, address and, where available, telephone number and e-mail address. If applicable, the job title and/or capacity in which the respondent is being named also shall be included;
- (3) a description of the alleged act or acts of discrimination, harassment or retaliation;
- (4) the date or dates each alleged act of discrimination, harassment or retaliation occurred, including the date of the last or most recent alleged act;
- (5) each protected basis upon which the alleged discrimination or harassment was based;
- (6) for retaliation complaints, the date and type of protected activity in which the complainant engaged;
- (7) the complainant's declaration, made under penalty of

perjury under the laws of the State of California, that to the best of his or her knowledge all information stated is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true;

(8) the signature of the complainant, or an authorized signature, and the date signed, unless the complaint is filed electronically;

(9) complaints filed electronically need not be signed; complaints filed electronically shall state that by submitting the complaint, the complainant declares under penalty of perjury under the laws of the State of California that to the best of his or her knowledge, all information stated in the complaint is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true;

(e) A person who files a right-to-sue complaint shall also provide the following information about himself or herself to the department, on a form prescribed by the department, for processing and statistical purposes:

- (1) race or ethnicity;
- (2) primary language;
- (3) age;
- (4) national origin or ancestry, if filing on the basis of national origin or ancestry discrimination;
- (5) disability, if filing on the basis of disability discrimination;
- (6) marital status, if filing on the basis of marital status discrimination;
- (7) religion, if filing on the basis of religious discrimination;
- (8) type of sex discrimination, if filing on the basis of sex discrimination;
- (9) gender;
- (10) occupation;
- (11) how the complainant heard about the department; and
- (12) whether the complainant has an attorney and, if so, the name, address, and telephone number of the attorney.

(f) If a complaint for investigation has been filed with the department and the department does not issue an accusation within one-hundred-fifty (150) days of the filing date of the complaint, the department shall issue a written notice advising complainant of his or her right to request a right-to-sue notice and withdraw the complaint. When a right-to-sue notice has not earlier been requested, the department shall issue a right-to-sue notice at the completion of its investigation or one year after the complaint is filed, whichever occurs first.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12965(b), Government Code.

§ 10006. Filing a Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act

(a) Any person claiming to be aggrieved by an alleged violation of the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) (also known as a denial of service or public accommodation discrimination), Ralph Civil Rights Act (Civ. Code, § 51.7) or Disabled Persons Act (Civ. Code, § 54 et seq.) may file a complaint for investigation with the department. The department's procedures for processing employment discrimination complaints set forth in these regulations also shall apply to complaints alleging a violation of the Unruh Civil Rights Act, Ralph Civil Rights Acts or Disabled Persons Act (unless the complaint also alleges housing discrimination over which HUD has concurrent jurisdiction), except that the department shall not issue a right-to-sue notice as none is required to file a civil action alleging a violation of the Unruh Civil Rights Act, Ralph Civil Rights Acts or Disabled Persons Act.

(b) The department's procedures set forth in these regulations for processing housing discrimination complaints dual-filed with HUD shall apply to any Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act complaint filed with the department alleging an unlawful housing practice over which HUD has concurrent jurisdiction.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 51, 51.7, 52(f), 54, 54.3(b), Civil Code; Sections 12930(f)(2), and 12948, Government Code.

§ 10007. Intake

(a) To determine whether the department has jurisdiction over the conduct about which a person seeks to complain, or the respondent against whom the person seeks to file a complaint, the department shall screen potential complaints filed for investigation and, where it appears that the department may have jurisdiction, conduct an intake interview.

(b) A person may schedule an appointment for an intake interview for an employment discrimination complaint via the department's Web site at www.dfeh.ca.gov, by sending a request via e-mail to contact.center@dfef.ca.gov, or by calling the department's toll-free telephone number listed on its Web site. Individuals also may call the department's toll-free number or send an e-mail to contact.center@dfef.ca.gov to obtain basic technical assistance or referrals.

(c) Persons whose statute of limitations is about to run on a complaint for investigation, or who seek to file a complaint for investigation alleging a violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act may schedule an intake appointment with a DFEH office listed on the department's Web site by telephoning the office directly, e-mailing or faxing the office's district or regional administrator, or telephoning the department's toll-

free number and requesting the telephone number of the nearest DFEH office. Persons may also send an e-mail to contact.center@dfeh.ca.gov to obtain the telephone number of the nearest DFEH office. Contact shall be made with a department office via telephone, e-mail, facsimile, or other written or electronic means. Service may be denied to any member of the public who appears in person at a department office without the prior consent of the district or regional administrator.

(d) The department shall provide persons for whom an intake appointment has been made written confirmation of the date and time of the intake interview.

(e) Persons for whom an intake appointment has been made shall provide the department the following information in writing prior to the commencement of the intake interview on a form prescribed by the department:

(1) the name and, where available, the address, telephone number, and e-mail address of the person seeking to file the complaint;

(2) the name, address and, where available, telephone number and e-mail address of the entity or person against whom the individual wishes to file a complaint. If applicable, the number of individuals employed by the entity or person against whom the individual wishes to file a complaint also shall be provided;

(3) the name of the employer, if applicable, as it appears on the most recent U.S. Internal Revenue Service form W-2 the person received, against whom the person wishes to file a complaint;

(4) the name and, where known, home address, telephone number, e-mail address, and job title of any person against whom the individual wishes to file a complaint of discrimination;

(5) each protected basis upon which the discriminatory conduct about which the person wishes to complain was based;

(6) the discriminatory conduct or treatment the person experienced and the date or dates such discriminatory conduct or treatment occurred;

(7) for retaliation complaints, the protected activity in which the person engaged and the date of the protected activity;

(8) the reason the person believes the conduct experienced was discriminatory and, if applicable, the name, address, telephone number, e-mail address and job title of any individual the employer treated more favorably;

(9) the name, address, telephone number, e-mail address and job title of each individual believed to have relevant information regarding the complaint of discrimination and a brief summary/description of the information;

(10) whether the person has filed a complaint with the EEOC;

(11) the following additional information for employment discrimination complaints:

A. date of hire or application for job at issue;

B. job title and rate of pay at time the discriminatory treatment or conduct occurred;

C. name and title of immediate supervisor or interviewer;

D. if employment was terminated, name of replacement and his/her protected basis, if any, where known;

E. if employment was terminated or prospective employer failed to hire, whether other employment was subsequently obtained and if so, the date of hire, job title, and rate of pay of replacement job;

F. If not hired for desired position:

a. how information about available position and rate of pay was obtained;

b. whether application for desired position was made orally or in writing;

c. name and/or job title of person to whom application was submitted or made and date of application;

d. date and manner in which decision not to hire was communicated; and

e. name and rate of pay, if known, of person hired for desired job.

(f) The department may cancel the intake appointment of any person who fails to provide the foregoing information by the deadline the department designates.

(g) Intake interviews shall be conducted by telephone or other electronic means unless the department determines that special circumstances, such as the need for a sign language interpreter, require an in-person intake interview.

(h) The department shall liberally construe the facts alleged by a potential complainant when evaluating whether to accept a complaint.

(i) Notwithstanding the foregoing, the department shall only accept complaints for investigation where:

(1) The conduct alleged, if proven, would violate a law the department enforces.

(2) The statute of limitations has not run. For complaints alleging a continuing violation, the most recent act of harm alleged shall have occurred within the applicable limitations period. Where there is doubt about whether the statute of limitations has run, the complaint shall be taken by the department and the issue of timeliness investigated and analyzed during the investigation.

(3) Each named respondent is an entity or person over whom the department has jurisdiction under the laws the department enforces. Where there is doubt about whether the department has jurisdiction over a particular respondent, the complaint shall be taken by the department and the issue of jurisdiction investigated and analyzed during the investigation.

(j) At the conclusion of the intake interview, complainants with claims over which another state agency may have jurisdiction shall be advised accordingly and provided referral information, regardless of whether the department also has jurisdiction over some or all of a complainant's claims.

(k) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included

in a complaint the complainant previously filed with the department or the EEOC against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12948, and 12960(b) & (d), Government Code.

§ 10008. Priority Intake

(a) A person who seeks to file a complaint for investigation whose statute of limitations would run in thirty (30) days or less, or who seek to file a complaint for investigation alleging a violation of the Unruh Civil Rights Act or Ralph Civil Rights Act, or a person who is terminally ill, may be given priority for the purpose of scheduling an intake appointment.

(b) The department may file a complaint for investigation solely on the basis of a telephone interview with a complainant, without first obtaining the complainant's signature on the complaint, when doing so is necessary to avoid missing the statute of limitations for filing with the department. Notwithstanding the foregoing, the department shall obtain a signature on a complaint for investigation before the complaint is served.

(c) A person who seeks to file a complaint for investigation with the department that alleges retaliation occurring within one-hundred-eighty (180) days of the person's filing a prior complaint of discrimination with the department, or within one-hundred-eighty (180) days of that person's participation in an investigation conducted by the department, also may be given priority for the purpose of scheduling an intake appointment.

(d) Priority also may be given to a person who calls the department's communication center to reschedule an intake appointment. If the person is unavailable the next regularly scheduled intake day and is prepared with information necessary to conduct an intake interview at the time he or she calls to reschedule, the department may offer to interview the person by phone at that time ("instant intake"), pending staff availability.

(e) Any other person whose situation warrants a priority intake in the department's discretion may be given priority for the purpose of scheduling an intake appointment.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12940(h), 12948, and 12960(b) & (d), Government Code.

§ 10009. Drafting Complaints Filed for Investigation

(a) The department shall draft the language of each complaint filed for investigation on a complaint form prescribed by the department. The complaint shall contain all the information identified in section 12960(b) of the Government Code, and sections 10002 and 10007 of these regulations, and set forth the

allegations in ordinary and concise language of the department's choosing, identifying in the body of the complaint material dates, the name and job title of each individual responsible for the alleged unlawful employment practices, and the manner in which they are responsible. Such individuals shall be identified in the body of the complaint regardless of whether they are named as respondents or personally liable for their conduct under the laws the department enforces. The department shall liberally construe the facts alleged by a complainant when drafting a complaint and include all relevant claims supported by the facts alleged.

(b) The department may omit a complainant's address, telephone number, and e-mail address on any complaint alleging that the complainant has been subjected to violence or threats of violence including, but not limited to, sexual assault.

(c) Once drafted, a complaint may be signed by a complainant in person or sent to the complainant for signature via U.S. mail, private carrier mail, facsimile transmission, e-mail, or other electronic means. When requested in writing by an attorney or advocacy organization representing the complainant, the drafted complaint shall be sent to the attorney or advocacy organization for review and to obtain the complainant's signature.

(d) Any complainant or complainant's attorney who or advocacy organization which wishes to propose modifications to the unsigned complaint shall do so in writing submitted to the department via U.S. mail, private mail carrier, facsimile transmission, e-mail, or other electronic means. The department shall consider the proposed modifications and, if accepted, draft a new complaint which may be signed by a complainant in person or sent to the complainant for signature. When requested in writing by an attorney or advocacy organization representing the complainant, the modified complaint shall be sent to the attorney or advocacy organization for review and to obtain the complainant's signature. When modifications are not accepted, the department shall notify the complainant and his or her attorney or advocacy organization, if any, of the reasons for rejection and send to the complainant via U.S. mail, facsimile transmission, e-mail, or other electronic means another copy of the original complaint for signature.

Note: Authority cited: Section 12930 (e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12948, and 12960(b), Government Code.

§ 10010. Written Statement or Correspondence as Complaint

(a) If the statute of limitations would expire before an intake interview could be scheduled and completed for a complaint filed for investigation, the department may promptly initiate and conduct an intake interview by phone, without an appointment, or waive the intake process and accept a complaint for investigation using a written statement or correspondence from the complainant signed under penalty of perjury. As long as the written statement or

correspondence satisfies all the requirements set forth in section 12960 of the Government Code, and section 10002 of these regulations, alleges a claim or claims over which the department has jurisdiction, and the statutory deadline to file with the department is imminent, the department may accept such a written statement or correspondence as a complaint for investigation.

(b) A statement shall be handwritten or typed and may be submitted electronically or by facsimile transmission to the department.

(c) The department may accept a statement from a complainant's attorney as long as the complainant has signed the statement of complaint or submits a signed statement authorizing the attorney to sign the complaint on his or her behalf.

(d) When intake has been waived, an investigator shall interview the complainant as soon as practicable after the complaint is filed and file an amended complaint on the form prescribed by the department. If, during the interview, the complainant presents new facts or raises new issues not included in the original complaint, they may be included in the amended complaint as long as the new facts and/or issues are based on or relate back to the facts stated in the original complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12948, and 12960(b) & (d), Government Code.

§ 10011. Complaints Taken For Filing Purposes Only

(a) Where the department rejects at intake all or some of the allegations presented by a person who seeks to file an employment discrimination complaint for investigation by the department, the department shall explain the reasons for rejection and offer the person the option of filing a complaint taken for filing purposes only. The department may only reject an allegation if it is clear that the statute of limitations has run and/or that the allegation, if proven, would not constitute a violation of the FEHA.

(b) A complaint accepted by the department for filing purposes only shall state the rejected allegations, which shall not be investigated by the department. The department shall not dual-file the complaint with the EEOC, but shall give the complainant contact information for his or her local EEOC office. Where a person rejects the department's offer to take a complaint for filing purposes only, he or she may request that the department provide the reasons for rejection in writing, which the department shall thereafter provide.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10012. Director's Complaints

(a) The director, in his or her discretion, may make, sign, and file a complaint for investigation that satisfies all the requirements of section 12960 of the Government Code, and section 10002 of these regulations.

(b) The director, in his or her discretion, may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by a practice made unlawful by a law the department enforces.

(c) Receipt of an individual complaint alleging a pattern of discrimination, or a request or referral from a source outside the department, including but not limited to other state or federal agencies, may result in the filing of a director's complaint.

(d) Factors for determining whether to file a director's complaint include, but are not limited to:

(1) whether the respondent employs a large workforce that may be affected by the alleged unlawful practice, such that the anticipated remedy would impact a large number of persons or an entire industry; and/or

(2) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law; and/or

(3) whether resolution of the complaint would impact civil rights in a manner consistent with the department's mission.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), and 12961, Government Code.

§ 10013. Class or Group Complaints

(a) The director or an aggrieved person may file a complaint for investigation with the department on behalf of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful practice.

(b) When an aggrieved person wishes to file a class or group complaint, the department shall obtain the following additional information, to the extent available, from the person at intake:

(1) details regarding the manner in which the alleged unlawful practice has adversely affected other persons; and

(2) the name, address, telephone number, e-mail address, and protected status of each person besides the complainant adversely affected by the alleged unlawful practice.

(c) The class complaint shall state that the person is making the complaint on his or her behalf and on behalf of all others who have been, are, or will in the future be similarly aggrieved, or words to that effect.

(d) When a class complaint is accepted for filing, the department shall inform the complainant that, even though class language has been included in the complaint, the department shall later determine whether the complaint will be investigated as a class or group complaint. If the department later determines

that neither a class nor group complaint will be pursued, the department may investigate the complaint as an individual complaint if circumstances warrant.

(e) Factors the department considers when determining whether to investigate a complaint as a class or group complaint include, but are not limited to:

(1) whether the alleged unlawful practice or its adverse effects can be articulated as being group or class based; and/or

(2) whether it would be more efficient for the department to investigate a complaint on a class or group basis rather than to investigate multiple single complaints filed by individual complainants; and/or:

(3) whether the respondent employs a large workforce that may be affected by the alleged unlawful practice, such that the anticipated remedy would impact a large number of persons or an entire industry.

(f) The department shall notify the respondent in writing within one year after the filing of a complaint when the department determines that a complaint will be investigated as a class or group complaint. Any such writing also shall be served on the complainant.

(g) For any complaint treated by the department as a class or group complaint for purposes of investigation, conciliation, and accusation, an accusation shall issue, if at all, within two years after the filing of the complaint.

(h) When a complaint is pursued as a class or group complaint, the department shall provide the complainant written notice that includes, at a minimum, the following statements:

(1) the class or group designation extends the investigation period one year;

(2) although the investigative period is extended, the deadline for the department to issue a right-to-sue notice in a class or group complaint alleging an unlawful employment practice remains one year from the date the complaint was filed with the department;

(i) The director, in his or her discretion, may determine whether a director's complaint also shall be filed and pursued in conjunction with a class or group complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12961, and 12965(a), Government Code.

§ 10014. Retaliation Complaints – Special Considerations

(a) When retaliation is included among the allegations a complainant makes at intake, and the department has determined that it will accept the complainant's claims for investigation, all allegations, including retaliation, shall be combined in one complaint.

(b) When retaliation is alleged after a complaint has already been filed with the department, and the department has determined that it will accept the retaliation claim for investigation, the department shall file a separate retaliation complaint, except as follows:

(c) If the one-year statute of limitations has run and the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination) for which another discriminatory basis was originally alleged (e.g., national origin discrimination), the department shall amend the original complaint instead of taking a separate complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12940(h) and 12960(b), Government Code.

§ 10015. Medical Information – Special Considerations

(a) Whenever a complaint includes allegations that require the department to obtain and analyze medical information, such as complaints alleging physical or mental disability discrimination, denial of reasonable accommodation, pregnancy discrimination, and/or a violation of the California Family Rights Act (Gov. Code, § 12945.1 et seq.), the complainant shall authorize the department in writing to request and obtain copies of all directly relevant medical records or information reasonably necessary to evaluate and prosecute the complaint.

(b) During the enforcement division's investigation, all medical records the department obtains during the investigation shall be maintained in a section of the case file clearly marked "Confidential."

(c) If an accusation is issued, all directly relevant medical records or information reasonably necessary to prosecute the accusation or civil complaint, if any, may be disclosed by the department when disclosure is necessary to further prosecution and/or settlement of the claim.

(d) No medical records or information shall be disclosed by the department in response to a request for public records made pursuant to the California Public Records Act. (Gov. Code, § 6254(c).)

(e) No medical records or information shall be disclosed by the department in response to a third-party subpoena unless a Notice to Consumer/Employee has been served on the complainant and there has been no objection communicated to the department by the complainant or the complainant's attorney. (Code. Civ. Proc., §§1985.3, 1985.6, and 2020.410.)

(f) The department shall abide by complainant's attorney's requests to protect the privacy of complainant's medical information. However, if the department is unable to obtain the medical information and records it deems reasonably necessary to investigate and/or prosecute a complainant's allegations, the department may discontinue the investigation and close the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516 [174 Cal.Rptr. 160] [discovery of private information requires direct relevance to claim]; Sections 1985.3, 1985.6, and 2020.410, Code of Civil Procedure; Sections 6253, 6254(c), 12930(f)(1), 12940(a) & (m), 12945, 12945.1, 12945.2 and 12960(b), Government Code.

§ 10016. Standard for Accepting Complaint When Act of Harm Occurred Outside California

Where all other jurisdictional requirements have been met for filing a complaint for investigation with the department, the department shall accept a complaint when the act of harm occurred outside California if a connection can be established between the complainant and some act of the respondent that occurred within California.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code; Section 410.10, Code of Civil Procedure; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434 [58 Cal.Rptr.2d 899].

§ 10017. Effect of Prior Waiver Agreement/Release of All Claims

(a) Where all other jurisdictional requirements have been met for filing a complaint for investigation with the department, the department shall accept a complaint where a complainant presents at intake a signed waiver agreement or release of all claims. The investigation shall initially focus on obtaining information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department. Such information shall include, but not be limited to:

- (1) a description of all benefits received in exchange for signing the waiver;
- (2) the amount of time the complainant was given to consider the waiver before signing;
- (3) whether the complainant was given the opportunity to seek legal counsel before signing;
- (4) whether the complainant sought legal advice before signing;
- (5) the conditions under which the waiver was signed (e.g. whether the waiver was signed in a non-coercive atmosphere); and
- (6) whether the waiver was presented in a language understood by the complainant and/or whether interpretative services were provided.

(b) Where a respondent produces a signed waiver agreement or release of all claims during an investigation, the department shall promptly obtain information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department. Such information shall include, but not be limited to, the information identified in section 10017(a) of these regulations.

(c) The department shall close any case where it has been determined that a complainant has validly waived his or her right to file a complaint with the department unless the department determines that:

- (1) the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of employees; and/or
- (2) an anticipated affirmative remedy would impact a large

number of employees or an entire industry in a manner consistent with the department's mission; and/or

(3) the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12930(f)(1), and 12960(b), Government Code.

§ 10018. Complaints Taken After Expiration of Statute of Limitations Due to Department Error

The one-year time limit for filing a complaint of discrimination with the department may be tolled in cases where the department misleads the complainant about filing obligations, commits errors in processing the complaint, or improperly discourages or prevents the complainant from filing at all.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12960(d), Government Code; *Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs.1984-85, CEB 3 [1984 WL 54284 (Cal.F.E.H.C.)].

§ 10019. Complaints Dual-Filed with the EEOC

(a) Complaints filed with the department that include at least one claim over which the EEOC has concurrent jurisdiction shall be dual-filed with the EEOC, but investigated by the department, unless after preliminary investigation it is determined that the department does not have jurisdiction (e.g., religious employer exempt from coverage under the FEHA that is covered by Title VII of the 1964 Civil Rights Act.)

(b) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the EEOC against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), and 12963.

§ 10020. Complaints Transferred to the EEOC for Processing

(a) A complaint for investigation filed with the department by a person who alleges retaliation for filing a prior complaint with the EEOC, or participating in an investigation conducted by the EEOC, shall be waived to the EEOC for processing and immediately closed. Where the EEOC does not have jurisdiction because the 300-day federal statute of limitations has passed, the retaliation complaint shall be processed by the department on a non-priority basis.

(b) *Mohasco Corp. v. Silver* (1980) 447 U.S. 807 [65 L.Ed.2d 532, 100 S.Ct. 2486] (*Mohasco*) complaints:

(1) Complaints over which the EEOC has concurrent jurisdiction that are filed with the department between two-hundred-forty (240) and three-hundred (300) days of the first alleged act of harm ("*Mohasco* time frames") shall be waived to the EEOC for processing.

(2) All primary and co-respondent complaints filed for investigation with the department that fall within the *Mohasco* time frames shall be waived to the EEOC for processing and immediately closed. The department shall inform the complainant during intake that the EEOC will decide whether it will proceed against the co-respondents, if any.

(3) Complaints that fall within the *Mohasco* time frames that include claims over which the EEOC does not have concurrent jurisdiction shall be accepted by the department as two separate complaints: One complaint shall be taken that alleges all the claims over which the EEOC has concurrent jurisdiction and shall be dual-filed and waived to the EEOC for processing; another complaint shall be taken that alleges all claims over which the EEOC does not have concurrent jurisdiction, which shall not be dual-filed and shall remain with the department for investigation.

(c) Religious non-profit institutions:

(1) When it is determined at intake that an employer is exempt from the FEHA because it is a non-profit religious corporation, but the EEOC has jurisdiction over the religious employer under Title VII of the 1964 Civil Rights Act, a complaint shall be accepted by the department, registered, and waived to the EEOC for processing;

(2) When it is determined at intake that neither the department nor the EEOC has jurisdiction over a religious employer, the department shall accept a complaint for filing purposes only and promptly close the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), and 12963, Government Code; *Mohasco Corp. v. Silver* (1980) 447 U.S. 807 [65 L.Ed.2d 532, 100 S.Ct. 2486].

§ 10021. Service of Complaints

(a) Only verified complaints filed for investigation with the department by complainants not represented by counsel shall be served by the department. The department may, but is not required, to also serve:

(1) verified complaints filed for investigation with the department by complainants represented by counsel;

(2) complaints accepted only for filing purposes from complainants not represented by counsel; or

(3) complaints accepted only for filing purposes from complainants represented by counsel.

(b) The department shall strive to initiate service upon all respondents named in a verified complaint filed for investigation by a complainant not

represented by counsel, or any other complaint the department decides to service, within ten (10) working days after the complaint is filed. Whenever service is required or initiated pursuant to the department's discretion, service shall be initiated not more than sixty (60) days after the complaint is filed.

(c) The date of service is the date the complaint is placed in the mail (certified mail only) or personally delivered to the respondent.

(d) All department service documents shall be placed in an envelope clearly marked "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY ADDRESSEE OR DESIGNATE ONLY" regardless of whether the documents are served by personal service or certified mail with return receipt requested.

(e) If a complaint sent via certified mail to a respondent's correct last known address is returned as undeliverable, or if the respondent refused service, the department shall promptly take steps to re-serve the complaint including, but not limited to, initiating personal service of a verified complaint filed for investigation.

(f) The department may forego serving by certified mail and promptly initiate personal service whenever the circumstances warrant.

(g) The department shall not serve complaints issued in response to requests for an immediate right-to-sue notice, regardless of whether or not a complainant is represented by counsel.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12962, Government Code; *Wasti v. Superior Court* (2006) 140 Cal.App.4th 667 [44 Cal.Rptr.3d 625].

§ 10022. Amending Complaints

(a) The department may amend an open complaint of discrimination to:

(1) add bases or allegations for which the statute of limitations has not run;

(2) add or delete facts or change the wording of a complaint;

(3) correct the name of a respondent;

(4) add new bases, respondents, or complainants after the expiration of the one-year statute of limitations where the amendment either relates back to the same material facts set forth in the original complaint, or the original complaint contains language that specifically references or identifies the bases, respondents, or complainants to be added;

(5) add an allegation of retaliation after the one-year statute of limitations has run where the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination) for which another discriminatory basis was originally alleged (e.g., national origin discrimination); and/or

(6) add class or group allegations to an individual complaint and pursue the complaint as a class or group complaint.

(b) When an open complaint of discrimination has been amended:

(1) respondents shall be given sufficient notice and time to respond to new allegations;

(2) the filing date of the amended complaint remains the same as the original filing date.

(c) The department shall not amend an open complaint to add:

(1) allegations that are beyond the one-year statute of limitations if the allegations relate to a different set of facts than those alleged in the original complaint;

(2) bases or allegations that would have been rejected if raised at intake;

(3) bases or allegations refuted by evidence obtained during the investigation.

(4) Under the foregoing circumstances, the department shall offer the complainant a complaint for filing purposes only, which shall not be investigated, and which, if accepted by the complainant, shall contain the new bases and/or allegation(s).

(d) The department shall amend closed employment discrimination complaints as requested by complainants or their counsel.

(e) When the department amends a closed complaint, the department shall neither reopen the complaint nor make an administrative determination on the validity, retroactivity, or merits of the amendment.

(f) When a closed complaint is amended by the department, the original filing date and right-to-sue notice shall remain in effect, as shall the original statute of limitations for filing a private lawsuit.

(g) The department shall handle nonsubstantive changes to an original complaint, such as correcting an incorrect case number, incorrect address or misspelled word, by correcting the original complaint, not by amending it.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10023. Response to Complaint

(a) Unless granted an extension by the department, a written response to a complaint filed for investigation with the department shall be provided to the department within thirty (30) days of service of the complaint, except as follows: The requirement to provide a response shall be temporarily suspended for any complaint referred to the department's mediation division.

(b) No response to the complaint is required while the complaint is pending in mediation. However, unless granted an extension by the department, a response shall be provided to the department no later than twenty-one (21) days after the date the department notifies the respondent that a response is due because mediation was declined or was unsuccessful. After the complaint is returned for investigation, the enforcement division shall in writing notify the respondent or, if the respondent is represented, the respondent's attorney, of the exact date the response is due.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12960(b), and 12963, Government Code.

§ 10024. Conciliation

(a) Conciliation efforts undertaken by the department's enforcement division may include post-investigation conciliation and/or settlement conferences as well as pre-determination settlement negotiations. Whenever a complainant or respondent is represented by an attorney or advocacy organization, enforcement staff shall communicate with the party's attorney or advocate regarding settlement.

(b) Pre-determination settlement (PDS) negotiations are confidential; however, any settlement agreement entered into as a result of PDS negotiations that is signed by the department, as well as the terms of settlement, are not confidential.

(c) If the department determines after investigation that a preponderance of evidence exists to prove a complaint's allegations, both the complainant and respondent, as well as their respective attorneys or advocates, if any, shall be invited to participate in a conciliation or mediation conference on equal terms.

(d) Everything that transpires at a post-investigation conciliation conference shall be kept confidential, except as follows:

- (1) issues established as fact during the investigation;
- (2) any settlement agreement signed by the department, and the final terms of settlement; and/or
- (3) new facts presented by the respondent at the conciliation conference that cause the department to re-evaluate the case and determine not to issue an accusation. A respondent providing such information at a conciliation conference shall authorize the department to use the information to close the case.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f) and 12963.7, Government Code.

§ 10025. DFEH Mediation Division Services

(a) The department may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint before investigation commences ("pre-investigation mediation"). One or both parties to a complaint filed for investigation also may request pre-investigation mediation. Pre-investigation mediation conferences are not attended by any representative of the department's enforcement or legal divisions.

(b) While a pre-investigation complaint is with the mediation division, the requirement to submit a response to the complaint is temporarily suspended. However, if mediation is declined or is unsuccessful, a response shall be

provided to the department no later than twenty-one (21) days after the date the department notifies the respondent that a response is due because mediation was declined or was unsuccessful. After the complaint is returned for investigation, the enforcement division shall in writing notify the respondent or, if the respondent is represented, the respondent's attorney, of the exact date the response is due.

(c) The department also may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint after investigation ("post-investigation mediation"). Post-investigation mediation conferences conducted before an accusation is issued ("pre-accusation") shall be attended by a representative of the department's enforcement division. The enforcement division representative may be the investigating office's assigned staff counsel. If a post-investigation mediated settlement is reached pre-accusation, the enforcement division representative who participated in the mediation shall not sign the settlement agreement. If a settlement is not reached, and the enforcement division's mediation representative was the investigating office's assigned staff counsel, the legal division shall not assign the same staff counsel to issue and prosecute the accusation in the matter.

(d) Post-investigation mediation conferences conducted after an accusation is issued ("post-accusation") shall be attended by the member of the department's legal division who issued the accusation or who has subsequently been assigned the case. If settlement is reached, the legal division representative shall sign the settlement agreement. If settlement is not reached, the same staff counsel who issued the accusation and mediated the matter may prosecute the case.

(e) If, after investigation, the department determines that the complaint is valid and offers the parties mediation, such offer satisfies the department's obligation under Government Code section 12963.7 to "immediately endeavor to eliminate the unlawful ... practice complained of by conference, conciliation, and persuasion," regardless of whether the mediation occurs before or after the department issues an accusation.

(f) Regardless of whether the department refers a complaint to the mediation division before or after investigation has commenced, the department shall suspend investigation while the complaint is with the mediation division. After mediation is declined or is unsuccessful, the department shall commence, resume or complete the investigation as necessary.

(g) Mediation is voluntary. Therefore, the department shall not assign a complaint to a mediator unless both the complainant and respondent (or their respective attorneys or advocacy organizations, if any) agree to mediate.

(h) When both sides agree to mediate a complaint pre-accusation, the department may assign the complaint to a trained volunteer mediator or a trained mediator employed by the department's mediation division, or refer the complaint to a Fair Employment and Housing Commission administrative law judge or commissioner, based on mediator availability and the department's discretion. Whenever a complainant or respondent is represented by an attorney or

advocacy organization, the assigned mediator shall communicate with the party's attorney or advocate regarding scheduling and settlement.

(i) The mediation process is confidential, including, for pre-accusation mediations, any settlement agreement entered into by a complainant and respondent, and the terms thereof. However, the following are not confidential:

(1) issues established as fact during the investigation;
(2) post-accusation settlement agreements and the final terms of settlement; and/or

(3) new facts presented by the respondent at a post-investigation mediation conference that cause the department to re-evaluate the case and determine not to issue an accusation. A respondent providing such information at a mediation conference shall authorize the department to use the information to close the case.

(j) Any written settlement agreement reached through a DFEH mediation division conference may be used as evidence to enforce the terms of the settlement agreement if the conditions of Evidence Code section 1123 are satisfied and the agreement contains language showing the intent of the parties to be bound by the agreement's terms.

(k) A copy of any settlement agreement executed in connection with a DFEH mediation division conference shall be provided to the department's mediation division.

(l) DFEH complaints resolved through mediation shall be closed by the department.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 1119, 1120, and 1123, Evidence Code; Sections 12930(f) and 12963.7, Government Code.

§ 10026. Complaint Investigation

(a) After any employment discrimination complaint alleging facts sufficient to constitute a violation of the FEHA is filed for investigation with the department, the department shall initiate prompt investigation thereof.

(b) Where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation shall initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction.

(c) During the course of its investigation the department may, but is not required, to issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents. If a person or entity fails to comply with a subpoena, written interrogatories, or requests for production of documents properly issued and served by the department, after requesting compliance in writing and/or by telephone, the department shall file a petition with the superior court, in accordance with section 12965.3 of the Government Code, to compel compliance with its investigative discovery.

(d) The department shall gather during the course of an investigation all relevant evidence necessary to determine whether an unlawful practice has occurred.

(e) For all workplace discrimination complaints, the department shall obtain the complainant's complete personnel file or files from the respondent.

(f) The department shall prioritize early in the investigative process complex cases and cases that appear to have merit to better allocate the department's resources.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12963, and 12963.1–12963.5, Government Code.

§ 10027. Investigative Subpoenas

(a) During the course of an investigation, the department may issue and serve upon a person, corporation, partnership, association, public entity, or other organization a subpoena, on a form prescribed by the department, to require the attendance and testimony of a witness by deposition or other investigative proceeding or means including, without limitation, an investigative interview.

(b) "Investigative interview" means an in-person or telephonic interview of a witness, which the enforcement division conducts during the investigation of a complaint. Investigative interviews are distinct from investigative depositions. Witnesses examined by the department pursuant to a subpoena for an investigative interview need not be placed under oath and their testimony need not be recorded by stenographic or other means. Objections, if any, made at the time of an investigative interview need not be recorded, and evidence objected to may be considered by the department in its investigation notwithstanding any objection.

(c) A subpoena for an investigative interview or deposition, or other investigative proceeding, also may require the production of books, records, documents, and physical materials in the possession of, or under the control of, the person or organization named on the subpoena.

(d) Service of a subpoena for an investigative interview or deposition, or other investigative proceeding, shall be made in compliance with section 12963.1(b) of the Government Code in such manner as to allow the person or organization named on the subpoena reasonable time for compliance. In no event shall an investigative subpoena indicate a date for appearance or compliance that is less than fifteen (15) days after the date service of the subpoena is completed.

(e) No person named on a subpoena for investigative interview or deposition, or other investigative proceeding, shall be obliged to attend as a witness before the department at a place out of the county in which that person resides, unless the distance is less than 150 miles from the person's place of residence or good cause exists to require attendance of the witness at greater distance. Each witness who has appeared pursuant to an investigative

subpoena shall, upon demand, be paid by the department the same fees and mileage allowed by law to witnesses in civil cases.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1, and 12963.3, Government Code.

§ 10028. Investigative Requests for Production and Inspection

(a) During the course of an investigation, the department may issue and serve requests for production for inspection and copying of books, records, documents, and physical materials including, but not limited to, land or other commercial or real property such as worksites or housing accommodations, and electronically stored information in the possession or under the control of a person or organization. A request for production may be issued and served on the same persons and organizations and in the same manner as subpoenas may be issued and served by the department under section 12963.1 of the Government Code.

(b) A request for production shall identify with reasonable particularity the things that are to be inspected and specify a reasonable time, place, and manner of making the inspection, performing the copying, or producing copies of the requested books, records, documents, and physical materials.

(c) Within fifteen (15) days after service of a request for production or such longer time as the department may agree to, the recipient of the request shall serve on the department a written response to each item requested, either stating that inspection and copying shall be permitted as requested or objecting to the request and stating the grounds of the objection. Unless a request for production is objected to, the recipient of the request shall comply with the department's requests and permit inspection and copying, or produce copies of the requested books, records, documents, and physical materials, within thirty (30) days after service of the department's requests for production, or such longer time as the department may agree to.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1 and 12963.4, Government Code.

§ 10029. Priority Case Processing/Case Grading System

(a) The department shall prioritize investigation of the following complaints: (1) a complaint alleging a violation of the Ralph Civil Rights Act; (2) any employment complaint that is a companion to a Ralph Civil Rights Act complaint; (3) a complaint filed by a terminally ill complainant; (4) a complaint alleging retaliation occurring within one-hundred-eighty (180) days of the complainant filing a prior complaint of discrimination with the department or participating in a FEHA-related investigation, hearing or court process; and/or (5) any other complaint investigation that warrants priority in the department's discretion.

(b) In addition to the foregoing, to better allocate the department's resources, the department shall identify any employment discrimination complaint filed for investigation that likely would be meritorious, or whose successful litigation would impact a large number of employees if its allegations are proven. The department shall initially designate such complaints as priority complaints and process them in the same manner as other priority complaints. At its discretion, the department's legal division may later designate a priority complaint as a high priority complaint, depending upon its strength and potential for impact.

(c) The department shall preliminarily designate all other employment discrimination complaints filed for investigation as standard complaints, which the department shall investigate.

(d) Such initial designations shall continually be re-evaluated by the department throughout the investigative process, particularly after an employer's response is received and analyzed. Thus, a complaint initially designated a standard complaint later may be designated a priority complaint upon receipt and evaluation of additional evidence. Likewise, a complaint originally designated a priority complaint may be designated a standard complaint after reevaluation.

(e) Factors the department considers when determining whether a complaint is a priority or a standard complaint may include, but are not limited to:

(1) whether the alleged unlawful practice affects a group or class of employees or applicants;

(2) strength of the facts alleged;

(3) the severity of the alleged harm;

(4) whether the respondent employs a large workforce that may be affected by the alleged unlawful practice, such that a remedy would impact a large number of persons or an entire industry; and/or

(5) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

(f) Priority complaints may be eligible for allocation of additional department resources and early and on-going collaboration with the department's legal division.

(g) At no time shall the department disclose to any person outside the department the case grade or designation assigned to any complaint. All records of discussions regarding the grade or designation of a complaint shall be marked "Confidential," and be retained in the confidential section of the department's case file.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12963, Government Code.

§ 10030. Investigations Not Completed Within Statutory Time Limit

(a) Where an investigation is not completed within the statutory time limit the department may:

(1) continue the investigation;

(2) taking into consideration the complexity of the case, time necessary to complete the investigation, and likelihood of proving discrimination, close the case where continued investigation would be an inefficient use of the department's resources; or

(3) if the case is dual-filed with the EEOC, waive the case to the EEOC for continued investigation.

(b) When an investigation is completed after the statutory time limit and the complaint has been found meritorious, the department shall schedule a conciliation or mediation conference.

(c) The department shall not issue an accusation when an investigation is completed after the statutory time limit and a complaint has been found meritorious. However, the director, in his or her discretion, may issue a director's complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) & (h), 12963, and 12965(a), Government Code.

§ 10031. Accusation

(a) If, after investigation, it is determined by the department that a complaint has merit, the director, in his or her discretion, may cause a written accusation to be issued in the name of the department. The discretion to issue an accusation may be delegated to the department's chief counsel or his or her designated associate or assistant chief counsel.

(b) An accusation may be issued, if at all, after an unsuccessful post-investigation conciliation or mediation conference or, if circumstances warrant, the department may issue an accusation without holding a conciliation or mediation conference.

(c) The department has discretion not to issue an accusation when circumstances warrant. Factors considered by the department when determining whether to issue an accusation include, but are not limited to: (1) the strength and sufficiency of the evidence of unlawful conduct; (2) the likelihood of prevailing on the merits at hearing or trial; (3) the availability and allocation of department resources; (4) whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law; (5) whether issuance of an accusation and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission; and/or (6) whether the respondent has offered the complainant an equitable remedy the complainant has refused.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(h) and 12965(a), Government Code.

§ 10032. Notice of Case Closure

(a) Whenever a complaint filed for investigation with the department is

withdrawn by the complainant or dismissed by the department, or an investigation is closed or terminated by the department for any reason, the department shall promptly notify the complainant and respondent of the case closure, and the reason for closure, in writing. The department also shall provide the complainant a list of resources for filing a civil complaint in small claims court or locating private counsel.

(b) For complaints alleging unlawful employment practices in violation of the FEHA for which a right-to-sue notice has not already been issued, a notice of case closure shall also constitute a right-to-sue notice.

(c) When closing a complaint dual-filed with the EEOC, the department shall satisfy all reporting requirements arising from the department's work-sharing agreement with the EEOC.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12965(b) and 12971, Government Code.

§ 10033. Departmental Appeal

(a) Any person who wishes to appeal the department's decision to reject a complaint or close a case shall direct his or her concerns to the district administrator or, if there is no district administrator, the regional administrator of the office that rejected or closed the complaint. Appeals may be presented verbally by telephone or in writing.

(b) Regardless of whether an appeal is oral or written, the district administrator or, if there is no district administrator, the regional administrator, or other individual delegated any function, power, or duty of the district or regional administrator, shall respond in writing. Where the appeal concerns a complaint rejected for investigation, the district or regional administrator, or his or her designee, also shall draft a complaint for filing purposes only, to be included with the written response.

(c) Any person dissatisfied with the response of the district administrator may direct his or her further appeal to the regional administrator or his or her designee.

(d) Regardless of whether the further appeal is oral or written, the regional administrator, or other individual delegated any function, power, or duty of the regional administrator, shall respond in writing.

(e) Any person dissatisfied with the response of the regional administrator may direct his or her further appeal to the chief of enforcement.

(f) Regardless of whether the further appeal is oral or written, the chief of enforcement, or his or her designee, shall respond in writing.

(g) Any person dissatisfied with the response of the chief of enforcement may direct his or her further appeal to the director.

(h) Regardless of whether the further appeal is oral or written, the director, or his or her designee, shall respond in writing.

(i) The decision of the director is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(j) Any concerns regarding the handling of an open complaint shall be directed to the district administrator or, if there is no district administrator, the regional administrator of the office where the complaint is being investigated.

(k) Any person dissatisfied with the response of the district administrator may direct his or her concerns to the regional administrator or his or her designee.

(l) Any person dissatisfied with the response of the regional administrator, or his or her designee, may direct his or her concerns to the chief of enforcement.

(m) The response of the chief of enforcement, or other individual delegated any function, power, or duty of the chief of enforcement, is final and may not be appealed to any other department employee or officer while the complaint is open. After the complaint is closed, any remaining concerns may be directed to the director, whose response, and/or the response of his or her designee, shall be final and nonappealable to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(n) Any respondent who wishes to complain about the issuance of an accusation against the respondent shall direct his or her concerns to the chief counsel of the department's legal division.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; Sections 12960(b), 12965, and 12971, Government Code.

§ 10034. EEOC Substantial Weight Review

Any party aggrieved by the department's final action taken on a complaint dual-filed with the EEOC may, within fifteen (15) days of the action, request that the EEOC conduct a review in accordance with the procedures set forth by the EEOC for a Substantial Weight Review.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12960(b), 12965, 12971, Government Code; 29 CFR §§ 1601.76, 1601.77.

Subchapter 2. Housing Discrimination Complaints

§ 10035. Filing a Complaint of Housing Discrimination with the Department

(a) Any person claiming to be aggrieved by a housing practice made unlawful by the FEHA, or any other law the department enforces, may file with

the department a verified complaint, in writing, that shall describe the unlawful conduct alleged and include the following, on a form prescribed by the department:

- (1) complainant's name and, where available, address, telephone number and e-mail address;
- (2) respondent's name and, where available, address, telephone number and e-mail address;
- (3) a description of the alleged act or acts of housing discrimination, harassment or retaliation;
- (4) the date or dates each alleged act of housing discrimination, harassment or retaliation occurred, including the date of the last or most recent act alleged;
- (5) a description of the housing accommodation at issue;
- (6) the address of the housing accommodation at issue;
- (7) each protected basis upon which the alleged housing discrimination or harassment was based;
- (8) for retaliation complaints, the date and type of protected activity in which the complainant engaged;
- (9) the complainant's declaration, made under penalty of perjury under the laws of the State of California, that to the best of his or her knowledge, all information stated in the complaint is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true;
- (10) the signature of the complainant, or an authorized signature, and the date signed, unless the complaint is filed electronically;
- (11) complaints filed electronically need not be signed; complaints filed electronically shall state that by submitting the complaint, the complainant declares under penalty of perjury under the laws of the State of California that to the best of his or her knowledge, all information stated in the complaint is true and correct, except matters stated on information and belief, which the complainant declares he or she believes to be true.

(b) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice occurred, except that this period may be extended as set forth in section 10052 of the department's regulations.

(c) For all complaints not filed online via the Department's Web site, the filing date shall be the date the department receives a signed complaint, regardless of whether the complaint is signed by the complainant in a department office or the complaint is signed elsewhere and transmitted to the department via U.S. mail, private carrier mail (e.g., FedEx), electronic mail, facsimile, or hand delivery. The filing date for complaints referred by HUD is the date the HUD complaint is received by the department. All complaints shall be date-stamped received by the department on the same day the department first receives the signed complaint. A limited exception exists where a complainant cannot sign a complaint before the applicable statute of limitations runs. In this limited circumstance, the department shall file the unsigned complaint and date-stamp it received before the statute of limitations runs. Notwithstanding the foregoing, the

department shall obtain a signature on the unsigned complaint before it is served.

(d) The filing date for complaints filed via the department's Web site shall be the date on which the complaint was submitted online, which is printed on the complaint after the words "DATE FILED."

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), 12980(a)-(b), Government Code.

§ 10036. Liberal Construction of Complaint

The department shall liberally construe all complaints to effectuate the purpose of the laws the department enforces to safeguard the civil right of all persons to seek, obtain and hold housing without discrimination. Where the facts alleged in a housing discrimination complaint support a claim of retaliation, harassment, or any other claim over which the department has jurisdiction, the department shall construe the complaint to include those claims within the scope of the discrimination claim, regardless of whether such other claims are expressly stated. Likewise, where the facts alleged in a harassment complaint support a claim of discrimination, retaliation, or any other claim over which the department has jurisdiction, the complaint shall be construed to include those claims within the scope of the harassment claim, regardless of whether such other claims are expressly stated.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12921(b), 12930(f)(1)-(2), 12960(b), 12980(a), and 12993(a), Government Code.

§ 10037. Filing a Housing Discrimination Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), or Disabled Persons Act (Civ. Code, § 54 et seq.)

(a) Any person claiming to be aggrieved by an alleged violation of the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7) or Disabled Persons Act (Civ. Code, § 54 et seq.) may file a complaint for investigation with the department. The department's procedures for processing employment discrimination complaints set forth in these regulations also shall apply to housing discrimination complaints alleging a violation of the Unruh Civil Rights Act, Ralph Civil Rights Acts or Disabled Persons Act (unless the complaint also alleges housing discrimination over which HUD has concurrent jurisdiction), except that the department shall not issue a right-to-sue notice.

(b) Any Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act complaint filed with the department that alleges an unlawful housing

practice over which HUD has concurrent jurisdiction shall be processed by the department in the manner set forth in these housing regulations.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(2), 12948, 12955(d), and 12980(a), Government Code.

§ 10038. Intake

(a) To determine whether the department has jurisdiction over the conduct about which a person seeks to complain, or the respondent against whom a person seeks to file, the department shall screen potential housing discrimination complaints and, where it appears that the department may have jurisdiction, conduct an intake interview.

(b) A person may initiate the interview process by calling the department's toll-free telephone number for the housing unit listed on the department's Web site at www.dfeh.ca.gov. Persons also may call the department's toll-free number to obtain basic technical assistance or referrals.

(c) A person who seeks to schedule an intake appointment shall provide the department the following information in writing, prior to the scheduling of an intake interview, on a form prescribed by the department:

(1) the name and, where available, address, telephone number, and e-mail address of the person who seeks to file the complaint;

(2) the name and, where available, address, telephone number, and e-mail address of any other adults who sought housing with the person or who reside or would have resided with the person in the housing accommodation at issue;

(3) the names and ages of any children who sought housing with the person or who reside or would have resided with the person in the housing accommodation at issue;

(4) the name and, where available, address, telephone number, and e-mail address of the person or entity against whom the person seeks to file a complaint ("respondent");

(5) whether the respondent is an owner, manager, developer, management company, real estate broker, lending institution or other entity;

(6) the address and, if applicable, name of the property where the housing accommodation was sought;

(7) whether the desired housing accommodation was a single family home or an apartment; if an apartment, the number of units at the location;

(8) each protected basis upon which the discriminatory conduct about which the person wishes to complain was based;

(9) the discriminatory conduct or treatment the person experienced and the date or dates such discriminatory conduct or treatment occurred;

(10) for retaliation complaints, the protected activity in which the person engaged and the date of the protected activity;

(11) the reason the person believes the conduct experienced was discriminatory and, if applicable, the name, address, telephone number, and e-mail address of any tenant, applicant, or homebuyer the person believes was treated more favorably;

(12) the name, address, telephone number, and e-mail address of each person believed to have relevant information regarding the complaint of housing discrimination;

(13) whether the person has filed the same complaint with HUD;

(14) the name, address, telephone number and e-mail address of any other agency, organization, or group with which the person has filed the same complaint of discrimination;

(15) whether a civil complaint alleging the same unlawful housing practice(s) has been filed and, if so, a copy of the complaint;

(16) the following additional information for complaints alleging refusal or denial to show, rent, lease, sell or finance a housing accommodation:

A. how information about the vacancy or sale was obtained;

B. the terms of the sale, rental, or financing sought;

C. whether an application was submitted and, if so, the submission date;

D. if an application was not submitted, the reason no application was submitted;

E. the date of the denial or refusal;

F. the reason given for the denial or refusal;

G. the name address, telephone number, e-mail address and title of the person who made the denial or refusal;

H. whether a lease or contract was signed and, if so, a copy of the lease or contract;

I. the name, telephone number, and e-mail address of the person or persons who obtained the housing accommodation sought, if known;

(17) the following additional information for complaints alleging a discriminatory eviction:

A. date of initial notice;

B. date required to vacate;

C. whether the person has been served a Notice of Unlawful Detainer and, if so, the date of the notice and the court date;

D. the reason or reasons given for the eviction; and

E. the name, address, telephone number, and e-mail address of others who have been evicted.

(d) Upon receipt of the foregoing information on the form prescribed by the department, the department shall contact the person and schedule an intake appointment.

(e) Intake interviews shall be conducted by telephone or other electronic means unless the department determines that special circumstances,

such as the need for a sign language interpreter, require an in-person intake interview.

(f) The department shall liberally construe the facts alleged by a potential complainant when evaluating whether to accept a complaint.

(g) Notwithstanding the foregoing, the department shall only accept a complaint where:

(1) The conduct alleged, if proven, would violate a law the department enforces.

(2) The statute of limitations has not run. For complaints alleging a continuing violation, the most recent act of harm alleged shall have occurred within the applicable limitations period. Where there is doubt about whether the statute of limitations has run, the complaint shall be taken by the department and the issue of timeliness investigated and analyzed during the investigation.

(3) Each named respondent is an entity or person over whom the department has jurisdiction under the laws the department enforces. Where there is doubt about whether the department has jurisdiction over a particular respondent, the complaint shall be taken by the department and the issue of jurisdiction investigated and analyzed during the investigation.

(h) At the conclusion of the intake interview, complainants with claims over which another state agency may have jurisdiction shall be advised accordingly and provided referral information, regardless of whether the department also has jurisdiction over some or all of a complainant's claims.

(i) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the department or HUD against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)-(2), 12955(d), 12980(a), Government Code.

§ 10039. Priority Intake

(a) The following may be given priority for the purpose of scheduling an intake appointment for a housing discrimination complaint:

(1) a person whose statute of limitations would run in thirty (30) days or less;

(2) a person alleging a failure to rent where the desired unit is still available;

(3) a person facing an impending and allegedly discriminatory eviction where action by the department may delay the eviction;

(4) a person who is terminally ill;

(5) a homeless person or a person at risk of institutionalization;

(6) a person complaining about conduct that, if proven, would

constitute a violation of the Ralph Civil Rights Act; and/or

(7) any other person whose situation warrants a priority intake in the department's discretion.

(b) A person who seeks to file a complaint for investigation with the department that alleges retaliation occurring within one-hundred-eighty (180) days of the person's filing a prior complaint of discrimination with the department, or within one-hundred-eighty (180) days of that person's participation in an investigation conducted by the department, also may be given priority for the purpose of scheduling an intake appointment.

(c) The department may file a complaint solely on the basis of a telephone interview with a complainant, without first obtaining the complainant's signature on the complaint, when doing so is necessary to avoid missing the statute of limitations for filing with the department. Notwithstanding the foregoing, the department shall obtain a signature on the complaint before it is served.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), 12980(a), Government Code.

§10040. Testing

(a) Department staff may conduct a telephone test during the intake of a housing discrimination complaint, before a complaint is filed, to test for discriminatory selection practices without identifying themselves or the purpose of their inquiry.

(b) No test shall be conducted by department staff in connection with a housing discrimination complaint after the department files the complaint.

(c) Following the filing of a complaint of discrimination, department staff shall not contact a respondent without identifying himself or herself and stating whether the contact is for the purpose of investigation or conciliation.

(d) If testing is desired by the department after a complaint is filed, a test may be conducted by a fair housing agency.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12985, Government Code; *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363 [102 S.Ct. 1114, 71 L.Ed.2d 214]; *Inland Mediation Bd. v. City of Pomona* (C.D. Cal 2001) 158 F.Supp.2d 1120.

§ 10041. Drafting Housing Discrimination Complaints

(a) With the exception of HUD-generated complaints, the department shall draft the language of each housing discrimination complaint filed with the department on a complaint form prescribed by the department. The complaint shall contain all the information identified in section 12980(a) of the Government Code, and sections 10035 and 10038 of these regulations, and set forth the

allegations in ordinary and concise language of the department's choosing, identifying the following in the body of the complaint:

- (1) the protected basis or bases for the complaint;
- (2) all relevant facts, including pertinent dates, that indicate a causal connection between the protected basis and the act of discrimination alleged;
- (3) the reason or reasons the housing provider gave the complainant to explain why the housing benefit was denied; and
- (4) the sections of the Government or Civil Code alleged to have been violated.

(b) The department may omit a complainant's address, telephone number, and e-mail address on any complaint alleging that the complainant has been subjected to violence or threats of violence including, but not limited to, sexual assault.

(c) The department shall liberally construe the facts alleged by a complainant when drafting a complaint of housing discrimination and include all relevant claims supported by the alleged facts. Once drafted, a complaint may be signed by a complainant in person or sent to the complainant for signature via U.S. mail, facsimile transmission, e-mail, or other electronic means. When requested in writing by an attorney or advocacy organization representing the complainant, the drafted complaint shall be sent to the attorney or advocacy organization to obtain the complainant's signature.

(d) Any complainant or complainant's attorney who or advocacy organization which wishes to propose modifications to the unsigned complaint shall do so in writing submitted to the department via U.S. mail, private mail, facsimile transmission, e-mail, or other electronic means. The department shall consider the proposed modifications and, if accepted, draft a new complaint which may be signed by the complainant in person or sent to the complainant for signature. When requested in writing by an attorney or advocacy organization representing the complainant, the modified complaint shall be sent to the attorney or advocacy organization for review and to obtain the complainant's signature. When modifications are not accepted, the department shall in writing notify the complainant and his or her attorney or advocacy organization, if any, of the reasons for rejection and send to the complainant via U.S. mail, facsimile transmission, e-mail, or other electronic means another copy of the original complaint for signature.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), and 12980(a), Government Code.

§ 10042. Written Statement or Correspondence as Complaint

(a) If the statute of limitations would expire before an intake interview could be scheduled and completed for a housing discrimination complaint, the

department may promptly initiate and conduct an intake interview by phone, without an appointment, or waive the intake process and accept a complaint for investigation using a written statement or correspondence from the complainant signed under penalty of perjury. As long as the written statement or correspondence satisfies all the requirements set forth in section 12980(a) of the Government Code and section 10035 of these regulations, alleges a claim or claims over which the department has jurisdiction, and the statutory deadline to file with the department is imminent, the department may accept such a written statement or correspondence as a complaint for filing purposes.

(b) A statement shall be handwritten or typed and may be submitted electronically or by facsimile transmission to the department.

(c) The department may accept a statement from a complainant's attorney as long as the complainant has signed the statement of complaint or submits a signed statement authorizing the attorney to sign the complaint on his or her behalf.

(d) When intake has been waived, an investigator shall interview the complainant as soon as practicable after the complaint is filed and file an amended complaint on the form prescribed by the department. If, during the interview, the complainant presents new facts or raises new issues not included in the original complaint, they may be included in the amended complaint as long as the new facts and/or issues are based on or relate back to the facts stated in the original complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), and 12980(a), Government Code.

§ 10043. Multiple Complainants

(a) The department shall file a separate complaint for each adult party aggrieved by an alleged unlawful housing practice unless both of the following conditions exist:

(1) The complainants are married and have the same last name;
and

(2) The allegations and fact situations are identical.

(b) When two separate complaints are taken, any minor children of the adult complainants shall be listed on only one of the complaints.

(1) The department shall determine which of the individual complaints should logically list the minor child complainant on the basis of such considerations as surname or legal custody.

(2) The adult complainant shall sign the complaint on behalf of the minor child.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), 12980(a), Government Code.

§ 10044. HUD-Generated Complaints

All complaints filed with HUD that HUD refers to the department for investigation shall be directed to the department's housing intake unit. Provided all jurisdictional requirements are met, HUD-generated complaints shall immediately be assigned a department case number. A separate intake interview typically will not be conducted by the department before filing a HUD-generated complaint. Notwithstanding the foregoing, all other procedures applicable to housing discrimination complaints filed initially with the department shall apply to complaints filed initially with HUD, which HUD refers to the department for investigation.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(a), Government Code.

§ 10045. Department-Generated Complaints

(a) The department shall refer to HUD for dual-filing all filed housing discrimination complaints not generated by HUD unless HUD lacks jurisdiction over the alleged discriminatory housing practice or the housing accommodation at issue. Unless otherwise directed by HUD, the responsibility for investigating complaints initially filed with the department that HUD accepts for dual-filing shall remain with the department.

(b) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with HUD against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(a), Government Code.

§ 10046. Director's Complaints

(a) The director, in his or her discretion, may make, sign, and file a housing discrimination complaint that satisfies all the requirements of Government Code section 12980(a) and section 10035 of these regulations.

(b) The director, in his or her discretion, may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful housing practice.

(c) Receipt of an individual complaint alleging a pattern of discrimination, or a request or referral from a source outside the department, including but not limited to other state or federal agencies, may result in the filing of a director's complaint.

(d) Factors for determining whether to file a director's complaint include, but are not limited to:

- (1) whether the respondent is large enough such that the anticipated remedy would impact a large number of persons; and/or
- (2) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law; and/or
- (3) whether resolution of the complaint would impact civil rights in a manner consistent with the department's mission.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), 12961, and 12980(a) & (c), Government Code.

§ 10047. Class or Group Complaints

(a) The director or an aggrieved person may file a housing discrimination complaint with the department on behalf of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful housing practice.

(b) When an aggrieved person wishes to file a class complaint, the department shall obtain the following additional information, to the extent available, from the person at intake:

(1) details regarding the manner in which the alleged unlawful housing practice has adversely affected other persons; and

(2) the name, address, telephone number, e-mail address, and protected status of each person besides the complainant adversely affected by the practice.

(c) The class complaint shall state that the person is making the complaint on his or her behalf and on behalf of all others who have been, are, or will in the future be similarly aggrieved, or words to that effect.

(d) When a class complaint is accepted for filing, the department shall inform the complainant that, even though class language has been included in the complaint, the department shall later determine whether the complaint will be investigated as a class or group complaint, and inform the complainant of the decision in writing. If the department later determines that neither a class nor group complaint will be pursued, the department may investigate the complaint as an individual complaint if circumstances warrant.

(e) Factors the department considers when determining whether to investigate a complaint as a class or group complaint include, but are not limited to:

(1) whether the alleged unlawful practice or its adverse effects can be articulated as being group or class based; and/or

(2) whether it would be more efficient for the department to investigate a complaint on a class or group basis rather than to investigate multiple single complaints filed by individual complainants; and/or

(3) whether the respondent is a large housing provider in the community or statewide, or the complaint addresses an issue that is unique, critical to the development of the law, or important to the community.

(f) The department shall notify the respondent in writing within one year after the filing of a complaint when the department determines that a complaint shall be investigated as a class or group complaint. Any such writing also will be served on the complainant.

(g) For any complaint treated by the department as a class or group complaint for purposes of investigation, conciliation, and accusation, an accusation shall issue, if at all, within two years after the filing of the complaint.

(h) When a complaint is pursued as a class or group complaint, the department shall provide the complainant written notice that the class or group designation extends the investigation period one year.

(i) The director, in his or her discretion, may determine whether a director's complaint also shall be filed and pursued in conjunction with a class or group complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12961, 12965(a), and 12980(a) & (c), Government Code.

§ 10048. Retaliation Complaints – Special Considerations

(a) When retaliation is included among the allegations a complainant makes at intake, and the department has determined that it will accept the complainant's claims for investigation, all allegations, including retaliation, shall be combined in one complaint.

(b) When retaliation is alleged after a complaint has already been filed with the department, and the department has determined that it will accept the retaliation claim for investigation, the department shall file a separate retaliation complaint, except as follows:

(c) If the one-year statute of limitations has run and the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination of lease) for which another discriminatory basis was originally alleged (e.g., request for reasonable accommodation), the department shall amend the original complaint instead of taking a separate complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12955.7, and 12980(a) & (c), Government Code.

§ 10049. Julie Waltz First Amendment Policy

(a) When a complainant seeks to file a housing discrimination complaint against a person who is not an owner within the meaning of section 12927(e) of the Government Code, the department shall screen the complaint at intake to determine whether it implicates protected First Amendment activity as described by the United States Court of Appeals for the Ninth Circuit in *White v. Lee* (9th Cir. 2000) 227 F.3d 1214 (*White*).

(b) Protected First Amendment activities described in *White* include, but are not limited to, writing and distributing signs, flyers, and newspapers or

articles; engaging in expressive associational activities that advocate discriminatory policies; and petitioning the government for redress of grievances (e.g., filing of a lawsuit that is not frivolous or participating in the political or legislative process).

(c) Complaints that have been deemed at intake to meet the criteria set forth in paragraphs (a) and (b) above shall be referred to the chief counsel of the department's legal division, or his or her designated associate or assistant chief counsel, to confirm whether the criteria have been met and, if so, determine whether a complaint should be taken under the department's First Amendment policy.

(d) If the chief counsel or his or her designated associate or assistant chief counsel accepts the complaint for investigation, then the chief counsel or designated associate or assistant chief counsel shall draft the complaint. The complaint shall only include the specific allegations that are appropriately subject to the department's investigation under this policy.

(e) When a complaint is accepted for investigation under the department's First Amendment policy, legal advice shall be provided by the chief counsel of the department's legal division, or his or her designated associate or assistant chief counsel, regarding the proper scope of the department's investigation. Such legal advice shall include the following three topics:

(1) Scope of Investigation: The investigation shall be limited in a manner that would permit the department to properly investigate the complaint, but not violate the respondent's First Amendment rights. The chief counsel or chief counsel's designated associate or assistant chief counsel shall provide guidance to department staff on how the specific allegations in the complaint should be investigated. The investigation shall not be overbroad, but instead shall focus on the specific allegations that were approved for an investigation under this policy. In providing this guidance, the chief counsel or his or her designated associate or assistant chief counsel shall be mindful that activities such as distributing flyers and newsletters, lobbying public officials, and petitioning the government are protected by the First Amendment. On the other hand, acts of violence, threats, or intimidation may constitute unlawful housing discrimination that is not protected by the First Amendment. The investigation shall focus on the specific allegations that might prove a FEHA violation.

(2) Communications: The chief counsel or the chief counsel's designated associate or assistant chief counsel shall advise department staff that when communicating with a respondent, the media, or member of the public regarding an investigation under this policy, department representatives shall make clear that protected First Amendment activities do not, by themselves, constitute a violation of the FEHA.

(3) Length of Investigation: The chief counsel or his or her designated associate or assistant chief counsel shall advise department staff on the proper length of the investigation. The department shall strive to complete investigations under this policy within one-hundred (100) days. Any investigation under this policy shall be completed as expeditiously as possible, and may not exceed one-hundred (100) days without the express approval of either the chief

counsel or the chief counsel's designated associate or assistant chief counsel. Under no circumstances may an investigation under this policy exceed one-hundred-eighty (180) days.

(f) If the chief counsel or chief counsel's designated associate or assistant chief counsel approves an investigation under this policy, the investigation shall be monitored by the department's legal division. The chief counsel or his or her designated associate or assistant chief counsel shall assign a department staff counsel to monitor the investigation. The monitoring staff counsel shall perform the following tasks:

(1) Case Review Every Thirty (30) Days: At least once every thirty (30) days the assigned staff counsel and the enforcement division staff member assigned to investigate the complaint shall discuss the status of the investigation. Topics to discuss shall include the proper scope of the investigation, and whether the investigation will be completed within one-hundred (100) days.

(2) Formal Discovery: The assigned staff counsel shall review and approve any formal investigative discovery (subpoenas, requests for production of documents, written interrogatories) to ensure that the discovery requests are not overbroad, and are limited to the allegations that have been approved for investigation by the chief counsel or the chief counsel's designated associate or assistant chief counsel.

(3) Settlement/Conciliation: Any settlement discussions or conciliation attempts in an investigation under this policy shall be conducted by the assigned staff counsel. During any such settlement discussions or conciliation attempts, the staff counsel shall take special care to ensure that the respondent is not asked to sacrifice any protected First Amendment activity to settle the action or end the investigation. Additionally, staff counsel shall not discuss protected First Amendment activity in the context of any settlement or conciliation efforts.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), and 12980(a) & (c), Government Code; *White v. Lee* (9th Cir. 2000) 227 F.3d 1214; Settlement Agreement and Stipulation of Dismissal with Prejudice, *Waltz v. Brumfield*, Case No. 5:08-cv-00432-JTM-OP (C.D.Cal., June 2010).

§ 10050. Medical Information– Special Considerations

(a) Whenever a complaint includes allegations that require the department to obtain and analyze medical information, such as complaints alleging physical or mental disability discrimination or denial of reasonable accommodation, the complainant shall authorize the department in writing to request and obtain copies of all directly relevant medical records or information reasonably necessary to evaluate and prosecute the complaint.

(b) During the enforcement division's investigation, all medical records the department obtains during the investigation shall be maintained in a section of the case file clearly marked "Confidential."

(c) If an accusation is issued, all directly relevant medical records or information reasonably necessary to prosecute the accusation or civil complaint, if any, may be disclosed by the department when disclosure is necessary to further prosecution and/or settlement of the claim.

(d) No medical records or information shall be disclosed by the department in response to a request for public records made pursuant to the California Public Records Act. (Gov. Code, § 6254(c).)

(e) No medical records or information shall be disclosed by the department in response to a third-party subpoena unless a Notice to Consumer/Employee has been served on the complainant and there has been no objection communicated to the department by the complainant or the complainant's attorney. (Code. Civ. Proc., §§1985.3, 1985.6, and 2020.410.)

(f) The department shall abide by complainant's attorney's requests to protect the privacy of complainant's medical information. However, if the department is unable to obtain the medical information and records it needs to investigate and/or prosecute a complainant's allegations, the department may discontinue the investigation and close the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516 [174 Cal.Rptr. 160] [discovery of private information requires direct relevance to claim]; Sections 1985.3, 1985.6, and 2020.410, Code of Civil Procedure; Sections 6253, 6254(c), 12927(c)(1), 12930(f)(1), 12955, and 12980(a) & (c), Government Code.

§ 10051. Effect of Prior Waiver Agreement/Release of All Claims

(a) Where all other jurisdictional requirements have been met for filing a housing discrimination complaint with the department, the department shall accept a complaint where a complainant presents a signed waiver agreement or release of all claims at intake. The investigation shall initially focus on obtaining information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department. Such information shall include, but not be limited to:

(1) a description of all benefits received in exchange for signing the waiver;

(2) the amount of time the complainant was given to consider the waiver before signing;

(3) whether the complainant was given the opportunity to seek legal counsel before signing;

(4) whether the complainant sought legal advice before signing;

(5) the conditions under which the waiver was signed (e.g., whether the waiver was signed in a non-coercive atmosphere); and

(6) whether the waiver was presented in a language understood by the complainant and/or whether interpretative services were provided.

(b) Where a respondent produces a signed waiver agreement or release of all claims during an investigation, the department shall promptly obtain information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department. Such information shall include, but not be limited to, the information identified in section 10051(a) of these regulations.

(c) The department shall close any case where it has been determined that a complainant has validly waived his or her right to file a complaint with the department unless the department determines that:

(1) the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of tenants or applicants;

(2) an anticipated affirmative remedy would impact a large number of tenants or applicants, or an entire industry, in a manner consistent with the department's mission; and/or

(3) the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12930(f)(1), and 12980(a) & (c), Government Code.

§ 10052. Complaints Taken After Expiration of Statute of Limitations Due to Department Error

The one-year statute of limitations for filing a housing discrimination complaint with the department may be tolled in cases where the department misleads the complainant about filing obligations, commits errors in processing the complaint, or improperly discourages or prevents the complainant from filing at all.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12980(a), Government Code; *Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs.1984-85, CEB 3 [1984 WL 54284 (Cal.F.E.H.C.)].

§ 10053. Service of Complaints

(a) The department shall initiate service upon all respondents named in a verified housing discrimination complaint within ten (10) working days after the complaint is filed.

(b) The date of service is the date the complaint is placed in the mail (certified mail only) or personally delivered to the respondent.

(c) All department service documents shall be placed in an envelope clearly marked "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY

ADDRESSEE OR DESIGNATE ONLY” regardless of whether the documents are served by personal service or certified mail with return receipt requested.

(d) If a complaint sent via certified mail to a respondent’s correct last known address is returned as undeliverable, or if the respondent refused service, the department shall promptly initiate steps to re-serve the complaint including, but not limited to, personal service of the verified complaint.

(e) The department may forego serving by certified mail and promptly initiate personal service whenever the circumstances warrant.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12986, Government Code.

§ 10054. Amending Complaints

(a) The department may amend an open housing discrimination complaint to:

- (1) add bases or allegations for which the statute of limitations has not run;
- (2) add or delete facts or change the wording of a complaint;
- (3) correct the name of a respondent;
- (4) add new bases, respondents, or complainants after the expiration of the one-year statute of limitations where the amendment either relates back to the same material facts set forth in the original complaint, or the original complaint contains language that specifically references or identifies the bases, respondents, or complainants to be added;
- (5) add an allegation of retaliation after the one-year statute of limitations has run where the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination of lease) for which another discriminatory basis was originally alleged (e.g., request for reasonable accommodation).
- (6) add class or group allegations to an individual complaint and pursue the complaint as a class or group complaint.

(b) When an open complaint of discrimination has been amended:

- (1) respondents shall be given sufficient notice and time to respond to new allegations;
- (2) the filing date of the amended complaint remains the same as the original filing date.

(c) The department shall not amend an open complaint to add:

- (1) allegations that are beyond the one-year statute of limitations if the allegations relate to a different set of facts than those alleged in the original complaint;
- (2) bases or allegations that would have been rejected if raised at intake;
- (3) bases or allegations refuted by evidence obtained during the investigation.

(d) The department shall handle nonsubstantive changes to an original complaint, such as correcting an incorrect case number, incorrect address or misspelled word, by correcting the original complaint, not by amending it.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), and 12980(a) & (c), Government Code.

§ 10055. Response to Complaint

(a) Unless granted an extension by the department, a response to a housing discrimination complaint filed with the department shall be provided to the department within twenty (20) days of service of the complaint, except as follows: The requirement to provide a response shall be temporarily suspended for any complaint referred to the department's mediation division.

(b) No response to the complaint is required while the complaint is pending in mediation. However, unless granted an extension by the department, a response shall be provided to the department no later than twenty-one (21) days after the date the department notifies the respondent that a response is due because mediation was declined or was unsuccessful. After the complaint is returned for investigation, the enforcement division shall in writing notify the respondent or, if the respondent is represented, the respondent's attorney, of the exact date the response is due.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12986, Government Code.

§ 10056. Conciliation

(a) Conciliation efforts undertaken by the department's enforcement division may include post-investigation conciliation and/or settlement conferences as well as pre-determination settlement negotiations. Whenever a complainant or respondent is represented by an attorney or advocacy organization, enforcement staff shall communicate with the party's attorney or advocate regarding settlement.

(b) Pre-determination settlement (PDS) negotiations are confidential; however, any settlement agreement entered into as a result of PDS negotiations that is signed by the department, as well as the terms of settlement, are not confidential.

(c) If the department determines after investigation that a preponderance of evidence exists to prove a complaint's allegations, both the complainant and respondent, as well as their respective attorney or advocate, if any, shall be invited to participate in a conciliation or mediation conference on equal terms.

(d) Everything that transpires at a post-investigation conciliation conference shall be kept confidential, except as follows:

(1) issues established as fact during the investigation;

(2) any settlement agreement signed by the department; and/or
(3) new facts presented by the respondent at the conciliation conference that cause the department to re-evaluate the case and determine not to issue an accusation. A respondent providing such information at a conciliation conference shall authorize the department to use the information to close the case.

(g) For cases that are dual-filed with HUD, conciliation and settlement agreements shall meet all requirements specified by HUD.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(i), and 12984, Government Code.

§ 10057. DFEH Mediation Division Services

(a) The department may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint before investigation commences ("pre-investigation mediation"). One or both parties to a complaint filed for investigation also may request pre-investigation mediation. Pre-investigation mediation conferences are not attended by any representative of the department's enforcement or legal divisions.

(b) While a pre-investigation complaint is with the mediation division, the requirement to submit a response to the complaint is temporarily suspended. However, if mediation is declined or is unsuccessful, a response shall be provided to the department no later than twenty-one (21) days after the date the department notifies the respondent that a response is due because mediation was declined or was unsuccessful. After the complaint is returned for investigation, the enforcement division shall in writing notify the respondent or, if the respondent is represented, the respondent's attorney, of the exact date the response is due.

(c) The department also may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint after investigation ("post-investigation mediation"). Post-investigation mediation conferences conducted before an accusation is issued ("pre-accusation") shall be attended by a representative of the department's enforcement division. The enforcement division representative may be the investigating office's assigned staff counsel. If a post-investigation mediated settlement is reached pre-accusation, the enforcement division representative who participated in the mediation shall not sign the settlement agreement. If a settlement is not reached, and the enforcement division's mediation representative was the investigating office's assigned staff counsel, the legal division shall not assign the same staff counsel to issue and prosecute the accusation in the matter.

(d) Post-investigation mediation conferences conducted after an accusation is issued ("post-accusation") shall be attended by the member of the department's legal division who issued the accusation or who has subsequently been assigned the case. If settlement is reached, the legal division representative shall sign the settlement agreement. If settlement is not reached,

the same staff counsel who issued the accusation and mediated the matter may prosecute the case.

(e) If, after investigation, the department determines that the complaint is valid and offers the parties mediation, such offer satisfies the department's obligation under Government Code section 12963.7 to "immediately endeavor to eliminate the unlawful ... practice complained of by conference, conciliation, and persuasion," regardless of whether the mediation occurs before or after the department issues an accusation.

(f) Regardless of whether the department refers a complaint to the mediation division before or after investigation has commenced, the department shall suspend investigation while the complaint is with the mediation division. After mediation is declined or is unsuccessful, the department shall commence, resume or complete the investigation as necessary.

(g) Mediation is voluntary. Therefore, the department shall not assign a complaint to a mediator unless both the complainant and respondent (or their respective attorney or advocacy organization, if any) agree to mediate.

(h) When both sides agree to mediate a complaint pre-accusation, the department may assign the complaint to a trained volunteer mediator or a trained mediator employed by the department's mediation division, or refer the complaint to a Fair Employment and Housing Commission administrative law judge or commissioner based on mediator availability and the department's discretion. Whenever a complainant or respondent is represented by an attorney or advocacy organization, the assigned mediator shall communicate with the party's attorney or advocate regarding scheduling and settlement.

(i) The mediation process is confidential, including, for pre-accusation mediations, any settlement agreement entered into by a complainant and respondent, and the terms thereof. However, the following are not confidential:

- (1) issues established as fact during the investigation;
- (2) post-accusation settlement agreements and the final terms of settlement; and/or
- (3) new facts presented by the respondent at a post-investigation mediation conference that cause the department to re-evaluate the case and determine not to issue an accusation. A respondent providing such information at a mediation conference shall authorize the department to use the information to close the case.

(j) Any written settlement agreement reached through a DFEH mediation division conference may be used as evidence to enforce the terms of the settlement agreement if the conditions of Evidence Code section 1123 are satisfied and the agreement contains language showing the intent of the parties to be bound by the agreement's terms.

(k) A copy of any settlement agreement executed in connection with a DFEH mediation division conference shall be provided to the department's mediation division.

(l) DFEH complaints resolved through mediation shall be closed by the department.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 1119, 1120, and 1123, Evidence Code; Sections 12930(f) and 12963.7, Government Code.

§ 10058. Complaint Investigation

(a) After any housing discrimination complaint alleging facts sufficient to constitute a violation of the FEHA is filed, the department shall initiate prompt investigation thereof.

(b) Where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation shall initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction.

(c) During the course of its investigation the department may, but is not required to, issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents. If a person or entity fails to comply with a subpoena, written interrogatories or requests for production of documents properly issued and served by the department, after requesting compliance in writing and/or by telephone, the department shall file a petition with the superior court, in accordance with section 12963.5 of the Government Code, to compel compliance with its investigative discovery.

(d) The department shall gather during the course of an investigation all relevant evidence necessary to determine whether an unlawful housing practice has occurred.

(e) The department shall prioritize early in the investigative process complex cases and cases that appear to have merit to better allocate the department's resources.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12963–12963.5, and 12980(c), Government Code.

§ 10059. Investigative Subpoenas

(a) During the course of an investigation, the department may issue and serve upon a person, corporation, partnership, association, public entity, or other organization a subpoena to require the attendance and testimony of a witness by deposition or other investigative proceeding or means including, without limitation, an investigative interview.

(b) "Investigative interview" means an in-person or telephonic interview of a witness, which the enforcement division conducts during the investigation of a complaint. Investigative interviews are distinct from investigative depositions. Witnesses examined by the department pursuant to a subpoena for an investigative interview need not be placed under oath and their testimony need not be recorded by stenographic or other means. Objections, if any, made at the time of an investigative interview need not be recorded, and evidence objected to

may be considered by the department in its investigation notwithstanding any objection.

(c) A subpoena for an investigative interview or deposition, or other investigative proceeding, also may require the production of books, records, documents, and physical materials in the possession of, or under the control of, the person or organization named on the subpoena.

(d) Service of a subpoena for an investigative interview or deposition, or other investigative proceeding, shall be made so as to allow the individual or organization named on the subpoena reasonable time for compliance. In no event shall an investigative subpoena indicate a date for appearance or compliance that is less than fifteen (15) days after the date service of the subpoena is completed.

(e) No person named on a subpoena for investigative interview or deposition, or other investigative proceeding, shall be obliged to attend as a witness before the department at a place out of the county in which that person resides, unless the distance is less than 150 miles from the person's place of residence or good cause exists to require attendance of the witness at greater distance. Each witness who has appeared pursuant to an investigative subpoena shall, upon demand, be paid by the department the same fees and mileage allowed by law to witnesses in civil cases.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1, 12963.4, and 12980(c), Government Code.

§ 10060. Investigative Requests for Production and Inspection

(a) During the course of an investigation, the department may issue and serve requests for production for inspection and copying of books, records, documents, and physical materials including, but not limited to, land or other commercial or real property such as worksites or housing accommodations, and electronically stored information in the possession or under the control of a person or organization. A request for production may be issued and served on the same persons and organizations and in the same manner as subpoenas may be issued and served by the department under section 12963.1 of the Government Code.

(b) A request for production shall identify with reasonable particularity the things that are to be inspected and specify a reasonable time, place, and manner of making the inspection, performing the copying, or producing copies of the requested books, records, documents, and physical materials.

(c) Within fifteen (15) days after service of a request for production or such longer time as the department may agree to, the recipient of the request shall serve on the department a written response to each item requested, either stating that inspection and copying shall be permitted as requested or objecting to the request and stating the grounds of the objection. Unless a request for production is objected to, the recipient of the request shall comply with the department's requests and permit inspection and copying, or produce copies of the requested books, records, documents, and physical materials, within thirty (30) days after service of the department's requests for production, or such longer time as the department may agree to.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1, 12963.4, and 12980(c), Government Code.

§ 10061. Priority Case Processing/Case Grading System

(a) The department shall prioritize investigation of the following housing discrimination complaints: (1) a complaint alleging a failure to rent where the desired unit is still available; (2) a complaint filed by a person facing an impending and allegedly discriminatory eviction where action by the department may delay the eviction; (3) a complaint filed by a homeless person or a person at risk of institutionalization; (4) a complaint alleging a violation of the Ralph Civil Rights Act; (5) a complaint filed by a terminally ill complainant; (3) a complaint alleging retaliation occurring within one-hundred-eighty (180) days of the complainant filing a prior complaint of discrimination with the department or participating in a FEHA-related investigation, hearing or court process; (4) any other complaint investigation that warrants priority in the department's discretion.

(b) In addition to the foregoing, to better allocate the department's resources, the department shall identify any housing discrimination complaint filed for investigation that likely would be meritorious, or whose successful litigation would impact a large number of applicants, tenants, or homebuyers if its allegations are proven. The department shall designate such complaints as priority complaints and process them in the same manner as other priority complaints. At its discretion, the department's legal division may later designate a priority complaint as a high priority complaint, depending upon its strength and potential for impact.

(c) The department shall designate all other housing discrimination complaints filed for investigation as standard complaints, which the department shall investigate.

(d) Such designations shall continually be re-evaluated by the department throughout the investigative process, particularly after a response to the complaint is received and analyzed. Thus, a complaint initially designated a standard complaint later could be designated a priority complaint upon receipt and evaluation of additional evidence. Likewise, a complaint originally designated a priority complaint could be designated a standard complaint after reevaluation.

(e) Factors the department considers when determining whether a complaint is a priority or a standard complaint may include, but are not limited to:

- (1) whether the alleged unlawful practice affects a group or class of applicants or tenants;
- (2) the strength of the facts alleged;
- (3) the severity of the alleged harm;
- (4) whether the respondent is large enough such that a remedy would impact a large number of persons; and/or
- (5) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

(f) Priority complaints shall be eligible for allocation of additional department resources and early and on-going collaboration with the department's legal staff.

(g) At no time shall the department disclose to any person outside the department the case grade or designation assigned to any complaint. All records of discussions regarding the grade or designation of a complaint shall be marked "Confidential," and be retained in the confidential section of the department's case file.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12963 and 12980(c), Government Code.

§ 10062. Investigations Not Completed Within Statutory Time Limit

(a) Where an investigation is not completed within the statutory time limit the department may:

(1) continue the investigation;

(2) taking into consideration the complexity of the case, time necessary to complete the investigation, and likelihood of proving discrimination, close the case where continued investigation would be an inefficient use of the department's resources; or

(3) if the case is dual-filed with HUD, waive the case to HUD for continued investigation.

(b) When an investigation is completed after the statutory time limit and the complaint has been found meritorious, the department shall schedule a conciliation or mediation conference.

(c) The department shall not issue an accusation when an investigation is completed after the statutory time limit and a complaint has been found meritorious. However the director, in his or her discretion, may issue a director's complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) & (h), 12963, 12965, and 12980(c) & (f), 12981(a), Government Code.

§ 10063. Accusation

(a) If, after investigation, it is determined by the department that a complaint has merit, the director, in his or her discretion, may cause a written accusation to be issued in the name of the department. The discretion to issue an accusation may be delegated to the department's chief counsel or his or her designated associate or assistant chief counsel.

(b) An accusation may be issued, if at all, after an unsuccessful post-investigation conciliation or mediation conference or, if circumstances warrant, the department may issue an accusation without holding a conciliation or mediation conference.

(c) The department has discretion not to issue an accusation when circumstances warrant. Factors considered by the department when determining whether to issue an accusation include, but are not limited to: (1) the strength and sufficiency of the evidence of unlawful conduct; (2) the likelihood of prevailing on the merits at hearing or trial; (3) whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law; (4) whether issuance of an accusation and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission; and/or (5) whether the respondent has offered the complainant an equitable remedy the complainant has refused.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(h), 12965, 12981(a), and 12981.1, Government Code.

§ 10064. Notice of Case Closure

(a) Whenever a complaint of housing discrimination is withdrawn by the complainant or dismissed by the department, the department shall promptly notify the complainant and respondent of the case closure, and the reason for closure, in writing. The department also shall provide the complainant a list of resources for filing a civil complaint in small claims court or locating private counsel.

(b) When closing a complaint dual-filed with HUD, the department shall satisfy all reporting requirements arising from the department's work-sharing agreement with HUD.

(c) The department shall not issue a right-to-sue notice upon the closure of a housing discrimination complaint unless HUD requires the issuance of a right-to-sue notice before an aggrieved party may file a civil action in court alleging housing discrimination.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12971, 12980(a) & (c), Government Code.

§ 10065. Departmental Appeal

(a) Any person who wishes to appeal the department's decision to reject a complaint or close a case shall direct his or her concerns to the district administrator or, if there is no district administrator, the regional administrator of the office that rejected or closed the complaint. Appeals may be presented verbally by telephone or in writing.

(b) Regardless of whether an appeal is oral or written, the district administrator or, if there is no district administrator, the regional administrator, or other individual delegated any function, power, or duty of the district or regional administrator, shall respond in writing. Where the appeal concerns a complaint rejected for investigation, the district or regional administrator, or his or her

designee, also shall draft a complaint for filing purposes only, to be included with the written response.

(c) Any person dissatisfied with the response of the district administrator may direct his or her further appeal to the regional administrator or his or her designee.

(d) Regardless of whether the further appeal is oral or written, the regional administrator, or other individual delegated any function, power, or duty of regional administrator, shall respond in writing.

(e) Any person dissatisfied with the response of the regional administrator may direct his or her further appeal to the chief of enforcement.

(f) Regardless of whether the further appeal is oral or written, the chief of enforcement, or his or her designee, shall respond in writing.

(g) Any person dissatisfied with the response of the chief of enforcement may direct his or her further appeal to the director.

(h) Regardless of whether the further appeal is oral or written, the director, or his or her designee, shall respond in writing.

(i) The decision of the director is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(j) Any concerns regarding the handling of an open complaint shall be directed to the district administrator or, if there is no district administrator, the regional administrator of the office where the complaint is being investigated.

(k) Any person dissatisfied with the response of the district administrator, or his or her designee, may direct his or her concerns to the regional administrator.

(l) Any person dissatisfied with the response of the regional administrator, or his or her designee, may direct his or her concerns to the chief of enforcement.

(m) The response of the chief of enforcement, or other individual delegated any function, power, or duty of the chief of enforcement, is final and may not be appealed to any other department employee or officer while the complaint is open. After the complaint is closed, any remaining concerns may be directed to the director, whose response, and/or the response of his or her designee, shall be final and nonappealable to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(n) Any respondent who wishes to complain about the issuance of an accusation against the respondent shall direct his or her concerns to the chief counsel of the department's legal division.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; Sections 12965, 12971, 12980(a) & (c), 12981(a), 12981.1, Government Code.

§ 10066. Substantial Equivalence

The provisions of the FEHA affording remedies to victims of housing discrimination shall be construed to afford the same remedies as those afforded under the federal Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.) and its implementing regulations (24 CFR Parts 100 et seq.), unless those afforded by the FEHA are greater.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12955.6, Government Code; *Broadmoor San Clemente Homeowners Assn. v. Nelson* (1994) 25 Cal.App.4th 1, 7-8 [30 Cal.Rptr.2d 316]; 42 U.S.C. § 3601 et seq.; 24 CFR Parts 100 et seq.